

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MICHAEL ARRINGTON, an
9 individual,

10 Plaintiff,

11 vs.

12 JENNIFER ALLEN, an individual,

13 Defendant.

No. 2:13 CV-00810-JLR
Hon. James L. Robart

JOINT RULE 26(F) REPORT

Date: July 22, 2013

Complaint Filed: May 7, 2013
Trial Date: None Set

1 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Western
2 District of Washington L.C.R. 26, and the Court's June 5, 2013 Order (Doc. 9),
3 counsel for the parties hereby present their Joint Rule 26(f) Report as follows:

4 **1. STATEMENT OF CASE**

5 Plaintiff Michael Arrington filed his Complaint against Defendant Jennifer
6 Allen on May 7, 2013. The Complaint asserts claims for defamation and
7 publication in a false light, and alleges that Defendant published defamatory
8 statements about Plaintiff, which statements Defendant refused to retract on
9 Plaintiff's demand, and which statements Defendant thereafter republished and
10 compounded by publishing additional defamatory statements. Plaintiff has
11 demanded a trial by jury.

12 Defendant filed her Answer to the Complaint on June 17, 2013. Defendant
13 admits that she made all but one of the statements, and has asserted affirmative
14 defenses (1) that plaintiff is a public figure, (2) that the statements are true and
15 believed to be true, and (3) that venue is improper.

16 **2. PROPOSED DEADLINE FOR JOINING ADDITIONAL PARTIES**

17 The parties do not anticipate adding any additional parties.

18 **3. CONSENT TO ASSIGNMENT OF U.S. MAGISTRATE JUDGE**

19 No.

20 **4. DISCOVERY PLAN**

21 **A. Initial Disclosures**

22 The parties agreed to commence the exchange of initial disclosures on or
23 before August 5, 2013.

24 **B. Subjects of Discovery**

25 Plaintiff anticipates needing the following discovery:

- 26 (1) All non-privileged emails sent by Plaintiff from January 1, 2012
27 to the time the lawsuit was served.
28

11 || Defendant anticipates the following discovery:

- 12 (1) All non-privileged e-mails and other electronic media sent or
13 received by Plaintiff from January 1, 2012 to the time the lawsuit
14 was served which relate to Defendant.

15 (2) Any evidence of abuse by Plaintiff of other women.

16 (3) Any evidence of any element of general or special damage
17 sustained by Plaintiff including medical and other records
18 created by health care providers due to automatic waiver of his
19 medical privilege(s) pursuant to RCW 5.60.060 (4)(b).

C. Electronically Stored Information

21 Both parties anticipate having a substantial amount of electronically stored
22 information, and have agreed to discuss the form or format of the disclosure of such
23 information.

D. Privilege Issues

25 The parties have agreed that privileged communications concerning this
26 litigation (*i.e.*, privileged communications concerning the potential commencement
27 of litigation and privileged communications occurring after the litigation was filed
28 concerning the litigation) do not need to be identified in privilege logs. The parties

1 further agreed that other privileged documents, to the extent they exist, should be
 2 identified in a privilege log no later than thirty days after the document production
 3 to which they are responsive. The parties also agreed that the provisions of Fed. R.
 4 Civ. P. 26(b)(5) shall govern with respect to the issue of "clawback" of privileged
 5 material. Defendant believes that the scope of discovery set forth at Part 4(B)(1)-(3)
 6 is too broad and should be narrowed to that media which relates to Plaintiff.

7 **E. Changes or Limitations on Discovery, and Whether Discovery**
 8 **Should Be Conducted in Phases or Focused on Particular Issues**

9 None.

10 **F. Discovery Orders**

11 The parties have agreed that a stipulated protective order, protecting the
 12 confidentiality of business information, may be appropriate in this case.

13 **5. VIEWS, PROPOSALS AND AGREEMENTS SET FORTH IN LOCAL**
 14 **RULE 26(f)(1) AND THE COURT'S JUNE 5, 2013 ORDER (DOC. 9)**

15 **A. Prompt Case Resolution**

16 Prior to filing suit, Plaintiff unsuccessfully sought a retraction by Defendant
 17 of the statements at issue in this action.

18 **B. ADR**

19 Plaintiff submits it is premature to discuss ADR, given the failure of recent
 20 attempts to elicit a retraction from Defendant. Defendant believes that ADR will be
 21 appropriate after initial discovery including depositions of the parties.

22 **C. Related Cases**

23 None.

24 **D. Discovery Management**

25 The parties intend to adhere to the discovery procedures as set forth in the
 26 Federal Rules of Civil Procedure.

27 **E. Anticipated Discovery Sought**

28 See 4-B above.

1 **F. Phasing Motions**

2 The parties currently anticipate no need for phasing motions.

3 **G. Preservation of Discoverable Information**

4 The parties do not currently anticipate any preservation issues.

5 **H. Privilege Issues**

6 See 4-D above.

7 **I. Protocol for Discovery of ESI**

8 See 4-C above.

9 **J. Alternatives to Model Protocol**

10 The parties do not currently propose an alternative model.

11 **6. DATE BY WHICH DISCOVERY CAN BE COMPLETED**

12 Summer of 2014.

13 **7. SEVERANCE, BIFURCATION OR OTHER ORDERING OF PROOF**

14 Plaintiff does not believe there should be any severance, bifurcation or other
15 ordering of proof. Defendant does not now have a position on bifurcation.

16 Defendant believes that punitive damages are not obtainable under
17 Washington law.

18 **8. PRETRIAL STATEMENTS AND PRETRIAL ORDER**

19 The parties do not currently propose dispensing with pretrial statements and
20 the pretrial order.

21 **9. ADR**

22 See Part 5-B above.

23 **10. SHORTENING SIMPLIFYING CASE**

24 The parties do not believe any portion of the Manual For Complex Litigation
25 should be utilized in this case.

26 **A. Dispositive Motions**

27 The parties anticipate filing motions for summary judgment or, in the
28 alternative, partial summary judgment. Defendant anticipates filing a motion

1 regarding the propriety of venue in this District.

2 **B. Unusual Legal Issues**

3 The parties do not believe this case presents any unusual legal issues.

4 **C. Settlement**

5 The parties have engaged in settlement discussions. The parties believe
6 further settlement discussions will not be productive, at least until certain fact
7 discovery has been completed. See Part 5-B above.

8 **11. DATE CASE READY FOR TRIAL**

9 Fall 2014.

10 **12. WHETHER TRIAL WILL BE JURY OR NON-JURY**

11 Jury.

12 **13. LENGTH OF TRIAL**

13 The parties estimate the trial will take seven days.

14 **14. NAMES AND ADDRESSES OF ALL TRIAL COUNSEL**

15 For Plaintiff Michael Arrington:

16 Sheryl J. Willert, WSBA #8617
17 William I. Aloe, WSBA #40906
18 WILLIAMS, KASTNER & GIBBS PLLC
19 601 Union Street, Suite 4100
20 Seattle, WA 98101-2380
21 Tel. (206) 628-6600

22 Eric M. George (*Pro Hac Vice*)
23 BROWNE GEORGE ROSS LLP
24 2121 Avenue of the Stars, Suite 2400
25 Los Angeles, CA 90067
26 (310) 274-7100

27 For Defendant Jennifer Allen:

28 Kelby D. Fletcher (WSBA #5623)
29 Justo G. Gonzalez (WSBA #39127)
30 STOKES LAWRENCE, P.S.

1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
(206) 626-6000

Nathan Goldberg (*Pro Hac Vice*)
ALLRED, MAROKO & GOLDBERG
6300 Wilshire Blvd., Suite 1500
Los Angeles, CA 90048
(323) 653-6530

15. DATES WHICH TRIAL COUNSEL NOT AVAILABLE FOR TRIAL

Counsel is unavailable for trial throughout the Fall of 2014.

16. ALL PARTIES SERVED, IF NOT, WHEN

The sole Defendant has been served.

**17. PARTIES WISH FOR SCHEDULING CONFERENCE BEFORE
SCHEDULE ORDER**

No.

18. LIST DATES EACH PARTY FILED DISCLOSURE STATEMENT

Not applicable.

19. PARTIES CONSENT TO HAVING HEARINGS VIDEOTAPED

No.

19

20

21

22

23

24

25

26

27

28

1 DATED: August 5, 2013

2 By s/ Eric M. George

3 Eric M. George (*Pro Hac Vice*)
4 BROWNE GEORGE ROSS LLP
5 2121 Avenue of the Stars, Suite 2400
6 Los Angeles, CA 90067
7 Tel. (310) 274-7100
8 Fax (310) 275-5697
egeorge@bgrfirm.com
9 Attorneys for Plaintiff Michael Arrington

10 Sheryl J. Willert, WSBA #8617
11 William I. Aloe, WSBA #40906
12 WILLIAMS, KASTNER & GIBBS PLLC
13 601 Union Street, Suite 4100
14 Seattle, WA 98101-2380
15 Tel. (206) 628-6600
16 Fax (206) 628-6611
swiller@williamskastner.com
waloe@williamskastner.com
17 Attorneys for Plaintiff Michael Arrington

18 DATED: August 5, 2013

19 By s/ Kelby D. Fletcher

20 Kelby D. Fletcher (WSBA #5623)
21 Justo G. Gonzalez (WSBA #39127)
22 STOKES LAWRENCE, P.S.
23 1420 Fifth Avenue, Suite 3000
24 Seattle, WA 98101-2393
25 (206) 626-6000

26 Nathan Goldberg (*Pro Hac Vice*)
27 ALLRED, MAROKO & GOLDBERG
28 6300 Wilshire Blvd., Suite 1500
Los Angeles, CA 90048
(323) 653-6530
Attorneys for Defendant Jennifer Allen

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2121 Avenue of the Stars, Suite 2400, Los Angeles, CA 90067.

On August 5, 2013, I served true copies of the following document(s) described as **JOINT RULE 26(F) REPORT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 5, 2013, at Los Angeles, California.

Claudia Bonilla

SERVICE LIST

Michael Arrington v. Jennifer Allen
**U.S. District Court, Western District of Washington
at Seattle, Case No. 13-CV-00810-JLR**

Sheryl J. Willert, WSBA #8617
William I. Aloe, WSBA #40906
**WILLIAMS, KASTNER
& GIBBS PLLC**
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Tel. (206) 628-6600
Fax (206) 628-6611
swiller@williamskastner.com
walo@williamskastner.com

10 Kelby D. Fletcher (WSBA #5623) Counsel for Defendant
11 Justo G. Gonzalez (WSBA #39127)
12 STOKES LAWRENCE, P.S.
13 1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
(206) 626-6000

14 Nathan Goldberg (*Pro Hac Vice*)
ALLRED, MAROKO
15 & GOLDBERG
16 6300 Wilshire Blvd., Suite 1500
Los Angeles, CA 90048
(323) 653-6530